



National Newspaper Association
Washington Programs
PO Box 5737
Arlington, VA 22205
(703) 465-8808
(703) 812-4555 (fax)
NNAWashington@nna.org
www.nna.org

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Introduction

The National Newspaper Association is the nation's oldest and largest newspaper association, representing 2,500 community newspapers nationwide. The typical NNA member is a family owned and operated publication with less than 10,000 circulation for a typical issue.

Community newspapers use e-mail for a variety of purposes. In addition to the traditional print versions of newspapers, many community newspapers now offer their news content on their websites. The popularity of internet news websites demonstrates the consumers' desire to have current news at their fingertips. As the internet has evolved, e-mail has become a popular way to receive the news. Many newspapers now offer daily e-mail digests delivered directly to their subscribers' e-mail inboxes, and readers can now take advantage of a common newspaper website feature, the "E-mail Article to a Friend" option. These e-mail based features provide a valuable service to subscribers who want to stay on top of the news in their communities, and it is important that newspapers be able to continue to supply these features to fulfill the needs of their subscribers.

Deadline for Opt-Outs

In response to the FTC's March 11, 2004 Advanced Notice of Proposed Rulemaking, NNA recommended a 30 day time period for processing opt-out requests, longer than the FTC's proposed 10 day period. NNA is greatly concerned that the FTC, in its most recent notice of proposed rule making, has decreased the amount of time a business would have to process an opt-out request to 3 days.

The majority of community newspapers NNA represents are weekly newspapers, which tend to have small staffs. While production schedules can vary greatly, a typical weekly paper published on a Thursday faces a Tuesday copy deadline, so that the paper can be printed on Wednesday and distributed on Thursday morning. Because the average community newspaper is a relatively small business, employees must remain focused on the primary goal of delivering the newspaper on time. While the desire to process opt-out requests promptly to fulfill customer service mandates runs high, sometimes as deadlines arrive, other work must be on the back burner. For this reason it would be very easy for a request that came in on a Monday morning to be held for processing until Friday morning or later, after that week's issue had been distributed and more than 3 business days after the request had been made.

While NNA continues to believe that 30 days would be an appropriate amount of time to allow for the processing of opt-out requests because of the limited staffs of many community newspapers and the complexities of maintaining multiple e-mail lists, 3 days will not allow adequate time to deal with these requests. NNA strongly urges the FTC to consider increasing the time allowed to process such requests, so that companies can process them properly and ensure that recipients are not receiving products or

information they do not wish to receive. If the overall time limit can not be extended, NNA would urge at least a longer allowance for small businesses.

Definitions

In general NNA feels that the FTC has created satisfactory definitions for providing clear and useful implementation of the CAN-SPAM Act. In particular NNA feels that the revised definitions for both “sender” and “valid physical postal address” resolve issues of concern.

By allowing one sender to be designated, while the products of one or more companies are being advertised, e-newsletters that rely on advertising can continue to place advertising without the complexities of complying with the opt-out requests made to all of their advertisers. Some newspapers provide digests of current headlines and news stories for no additional charge to subscribers. As the entity that controls the content and recipient list for these digests, the newspaper may be responsible for maintaining an opt-out list for its own content. But as a third-party communicator for advertisers who may purchase space in a digest, it should not be held liable for compliance with the opt-out requests of the advertiser's own content. Such a third-party liability immunity is consistent with common law for advertising and with policy in most if not all states. As a practical matter, compliance would be an impossibility--particularly for a small business.

NNA is also pleased that the proposed definition of “valid physical postal address” includes post office boxes because many community newspapers use post office boxes to retrieve their mail—particularly in rural areas. In fact, in some rural areas, the

box number is the street address for all practical purposes. NNA believes the specific word choice of Congress to require a “valid physical postal address” implies providing the recipient with an opportunity to communicate with the sender through the postal system. Providing a post office box provides for this type of communication.

Forward to a Friend

Many newspapers that offer websites include the option to send a story to a friend. These e-mails can contain commercial content with the news story, or simply a link to the news story on the newspaper’s website that contains commercial content as well. The FTC feels that the definitions provided by the CAN-SPAM Act prove that such e-mails forwarded by individuals through links on a website and not “induced” by the newspaper should be considered to be sent by the individual choosing to forward the message. Unfortunately, the FTC’s proposed definition of sender creates a circumstance in which the person whose name appears in the “From” heading can be designated the sender if there is commercial content from more than one advertiser. While some websites use the e-mail address of the individual forwarding the story in the “From” heading, others use their own e-mail address in forwarding the story. NNA believes that it would be beneficial to provide clarification in the rules that “forward-to-a-friend” e-mails that are not induced by the host website should not be considered spam from the host website, regardless of whose name and/or e-mail is listed in the “From” heading. The element of customer selection in the forwarding should insulate the ultimate recipient from the sort of blast spam that the Commission clearly contemplates here.

Transactional and Relationship Messages

Exemption from the opt-out requirements for transactional and relationship messages remains an important aspect of the CAN-SPAM rules. It is important that community newspapers and other businesses be able to transmit important account information to their customers. Community newspapers often send subscription renewal information via e-mail as well as the previously mentioned email news digests including key headlines and stories. Both of these types of e-mails should be considered transactional or relationship e-mails because they involve a transaction the recipient has agreed to enter into. This applies to cost-free transactions as well, such as free e-newsletters provided by the newspaper to its subscribers as part of the overall subscription service or at the subscriber's request.

Additionally, NNA believes that businesses should be able to send renewal notices for subscriptions for a period of up to 18 months after a subscription has lapsed. This grace period is necessary because not all subscribers are prompt with their renewal fees or in other cases simply choose not to renew for a given year because of financial or other factors. By not allowing a newspaper to contact its subscribers who have failed to renew on time, consumers could miss out on their chance to renew subscriptions they wish to continue. Most subscriptions run in a 12 month cycle. Allowing an 18 month grace period provides a suitable time for a publication to contact its existing customers and for them to find an opportunity in their personal budgets to renew. (While these comments primarily address the needs of individual newspaper, NNA notes that this point is important for its own institutional interests. Financial considerations might prohibit a member from paying its dues for a year, but at the midpoint in year 2, the

newspaper's fortunes might be looking up, enabling a renewal.)

Once a customer has agreed to pay for a product or service, he or she has entered into a commercial transaction, and any attempt to collect the money owed on that transaction, whether through a third-party debt collector or from the original seller, is part of the transaction and should therefore be considered a transactional e-mail.

E-mails from employers to employees through employer provided e-mail accounts should be considered relationship e-mails. An employer should not be punished for sending information to his/her employees he/she deems important to the employee's work.

Conclusion

The FTC has made several improvements from its original advanced notice of proposed rulemaking, which will allow newspapers to continue providing e-mail news digests to those subscribers who wish to have news delivered directly to their e-mail inboxes. There are however several areas where the FTC could improve the proposed rules, especially in lengthening the amount of time allowed to process opt-out requests and by clarifying in the rules that the sender of a message forwarded from a friend is not the host website. These changes will allow businesses to continue providing customers the services they desire, while not creating unfair burdens on the businesses.

Respectfully submitted,

Jeffrey Carson
Assistant Manager of Government Relations